



**Leicester Police Department**  
**90 South Main Street**  
**Leicester, MA 01524**



May 31, 2013

MuckRock News  
Mr. George LeVines  
DEPT MR 2174  
PO Box 55819  
Boston, MA 02205-5819

**RE: Public Records Request E-mailed to the LPD on 05/28/13**

Dear MuckRock News,

I have received and reviewed your public records request, which was submitted to the Leicester Police Department via e-mail on 05/28/13. The Leicester Police Department has begun processing your request and will gladly provide the documents it is legally required to produce under the Massachusetts Public Records Law.

**Interpretation of Request**

Massachusetts Law requires that "A records custodian is required to use his or her superior knowledge of his or her records to determine the precise record or records that is responsive to the request. However, a requester must provide a reasonable description of the requested records."<sup>1</sup> While I note that you referred to section 16.014 of the Massachusetts Public Records Retention Schedule, this only provides a broad overview of what is covered by the retention schedule, in this case "Controlled Substance Seizure Report (no arrest or warrant)." The term Controlled Substance Seizure Reports refers to reports which may include, but are not limited to, arrest reports, incident reports, found property reports, lab reports, and non-criminal seizure reports. I have provided you with a good faith estimate, based upon the aforementioned interpretation of your request. Should you wish to clarify your request further, please feel free to notify me and I will adjust the good faith estimate accordingly.

**Records Fee**<sup>2</sup>

Unless specifically addressed by statute, a custodian may charge twenty cents (\$0.20) per page for photocopies, twenty-five cents (\$0.25) per page for microfilm copies and fifty cents (\$0.50) per page for computer printouts. Examples of statutes establishing special fees for specific public records include: G. L. c. 66, § 10(a) (copies of police records) and G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

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<sup>1</sup> A Guide to the Massachusetts Public Records Law (pg. 5)

<sup>2</sup> See e.g., G.L. c. 66, section 10(a) (fees for police records); see also 950 CMR 32.06

As part of your request you have requested the following: "I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records." The Leicester Police Department does not waive the fees associated with public records requests as to do so for some requests and not for others would be an arbitrary and capricious application of a policy and thus patently unfair.

Additionally, I have noted on your website that MuckRock.com states in part that "MuckRock is an open government tool powered by state and federal Freedom of Information Laws, a generous grant from the Sunlight Foundation and you:" and that it also has fee based subscriptions for the public.

In light of the difficult economic times facing many municipalities such as the Town of Leicester, it would be fiscally irresponsible to provide the documents you have requested free of charge, so I am therefore denying your request for a waiver of the fees associated with your request.

### **Good Faith Estimate**

It is further estimated that the cost to compile the data which you have requested will exceed \$10.00. As required under the Massachusetts Public Records Law, I will provided you with a good faith estimate of the cost associated with your request; however, based on the broad scope of your request, you should notr the following:

The Leicester Police Department's Records Management System (RMS) does not have the capability to search for and/or locate just "Controlled Substance Seizure Reports." In order to locate these reports a manual search of several electronic searches will be required. Based on the aforementioned fact, it would also be time consuming to search the records in order to provide you with an exact estimate, so I am therefore advising that the attached good faith estimate is just that, an estimate.

### **2006**

|                                                                            |                  |
|----------------------------------------------------------------------------|------------------|
| Approximately 40 reports @ \$5.00 per report .....                         | = \$200.00       |
| Additional computer printed pages 100 @ .50 each.....                      | = \$ 50.00       |
| Redaction/refilling/etc. 10 minutes per report = 400 minutes @ 18 per hour | = \$120.00       |
| <hr/> Total                                                                | <hr/> = \$370.00 |

### **2007**

|                                                                            |                  |
|----------------------------------------------------------------------------|------------------|
| Approximately 40 reports @ \$5.00 per report .....                         | = \$200.00       |
| Additional computer printed pages 100 @ .50 each.....                      | = \$ 50.00       |
| Redaction/refilling/etc. 10 minutes per report = 400 minutes @ 18 per hour | = \$120.00       |
| <hr/> Total                                                                | <hr/> = \$370.00 |

### **2008**

|                                                                            |                  |
|----------------------------------------------------------------------------|------------------|
| Approximately 40 reports @ \$5.00 per report .....                         | = \$200.00       |
| Additional computer printed pages 100 @ .50 each.....                      | = \$ 50.00       |
| Redaction/refilling/etc. 10 minutes per report = 400 minutes @ 18 per hour | = \$120.00       |
| <hr/> Total                                                                | <hr/> = \$370.00 |

## 2009

|                                                                            |            |
|----------------------------------------------------------------------------|------------|
| Approximately 30 reports @ \$5.00 per report .....                         | = \$150.00 |
| Additional computer printed pages 80 @ .50 each.....                       | = \$ 40.00 |
| Redaction/refilling/etc. 10 minutes per report = 300 minutes @ 18 per hour | = \$ 90.00 |
| Total                                                                      | = \$280.00 |

## 2010

|                                                                            |            |
|----------------------------------------------------------------------------|------------|
| Approximately 30 reports @ \$5.00 per report .....                         | = \$150.00 |
| Additional computer printed pages 80 @ .50 each.....                       | = \$ 40.00 |
| Redaction/refilling/etc. 10 minutes per report = 300 minutes @ 18 per hour | = \$ 90.00 |
| Total                                                                      | = \$280.00 |

## 2011

|                                                                            |            |
|----------------------------------------------------------------------------|------------|
| Approximately 30 reports @ \$5.00 per report .....                         | = \$150.00 |
| Additional computer printed pages 80 @ .50 each.....                       | = \$ 40.00 |
| Redaction/refilling/etc. 10 minutes per report = 300 minutes @ 18 per hour | = \$ 90.00 |
| Total                                                                      | = \$280.00 |

## 2012

|                                                                            |            |
|----------------------------------------------------------------------------|------------|
| Approximately 20 reports @ \$5.00 per report .....                         | = \$100.00 |
| Additional computer printed pages 60 @ .50 each.....                       | = \$ 30.00 |
| Redaction/refilling/etc. 10 minutes per report = 200 minutes @ 18 per hour | = \$ 60.00 |
| Total                                                                      | = \$190.00 |

## 2013

|                                                                            |            |
|----------------------------------------------------------------------------|------------|
| Approximately 12 reports @ \$5.00 per report .....                         | = \$ 60.00 |
| Additional computer printed pages 30 @ .50 each.....                       | = \$ 15.00 |
| Redaction/refilling/etc. 10 minutes per report = 120 minutes @ 18 per hour | = \$ 36.00 |
| Total                                                                      | = \$111.00 |

### Exemptions Cited

Based upon interpretation of the lists, databases and inventory rosters that you are requesting as a custodian of records, I feel that it is only fair to advise you that the LPD will be redacting in whole or in part the records you are requesting. The Massachusetts Public Records Law Exemptions that the LPD will be citing, include but are not limited to, the following:

1. **Exemption (a) – The Statutory Exemption** – Any records that are specifically or by necessary implication exempted from disclosure by statute.

2. **Exemption (e)** - Notebooks and other materials prepared by an employee of the Commonwealth which are personal to him and not maintained as part of the files of the governmental unit.
3. **Exemption (f) - The Investigatory Exemption** - Withholding investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

### **Format of Records Released**

Your request also states the following: "I expect the request to be filled in an accessible format, including for screen readers, which provide text-to-speech for persons unable to read print. Files that are not accessible to screen readers include, for example, .pdf image files as well as physical documents."

While you may "expect" to receive documents in the aforementioned formats, the Massachusetts Public Record Law only requires that the LPD provide you with the documents and does not require that they be in the format the requestor expects. The type of request which you have submitted will likely require redaction as permitted under the Massachusetts Public Record Law and thus these requests are provided in printed format.

### **Notice To Attorneys**

If you are an attorney, the LPD further asserts that the court has issued specific guidelines regarding the use of the public records law to make "an end run" around the appropriate discovery process and Massachusetts Rules of Criminal Procedure. The Massachusetts Rules of Criminal Procedure were enacted as a result of an Acts and Resolve, which sets forth the necessary implication for the appropriate acquisition of the requested records, which is the discovery process.

Additionally, in my opinion, the Act and Resolve statutorily exempts them from being released in any other manner under these circumstances.<sup>3</sup>

### **Right of Appeal**

While the Leicester Police Department has not denied your request for public records, should you disagree with the information contained herein, you may exercise your statutory right of appeal as follows:

*"A requester who is denied access to any requested information may petition the Supervisor of Records (Supervisor) for a review of the request. The Supervisor will then instruct a staff member, usually a staff attorney or a legal intern, to contact the records custodian and requester to ascertain the relevant facts and discuss the applicable law. The findings of the attorney or intern are then reported to the*

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<sup>3</sup> The public records law cannot be used to circumvent this rule because "discovery should follow normal procedures in criminal cases where its availability lies in the discretion of the trial judge under standards developed" by the Supreme Judicial Court. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 64 (1976). See G.L. c. 4, § 7(26)(a); G.L. c. 213, § 3.



*Supervisor to assist in making a decision. The records custodian will receive an administrative order if the Supervisor determines that records are being improperly withheld or the proposed fee is excessive. If the records custodian does not comply with an order issued by the Supervisor, the case may be referred to the Office of the Attorney General or appropriate district attorney for enforcement.”<sup>4</sup>*

**Pre-payment Requirement**

The Massachusetts Secretary of the Commonwealth's Division of Public Records permits a records custodian to require payment of the estimated fee before commencing work. The Leicester Police Department will commence processing your request upon receipt of payment in the amount of \$2,251.00.<sup>i</sup> Payment must be in the form of cash or money order. Please make any money orders payable to the Town of Leicester.

Sincerely,



James J. Hurley  
Chief of Police

cc: public records file

Sent via e-mail with receipt confirmation requested

[Public Records Request Muck Rock .com controlled substance seizures]

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<sup>i</sup> Estimate only. Cost may vary.

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<sup>4</sup> 950 CMR 32.05(3)